

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 14, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2060-CR

Cir. Ct. No. 2012CT33

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRYANT A. PREINFALK,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Jefferson County: RANDY R. KOSCHNICK, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Bryant A. Preinfalk appeals a judgment of conviction for driving under the influence of an intoxicant (OWI), second offense, and the order denying his motion to suppress. Preinfalk argues that the arresting

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f)(2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

officer did not have reasonable suspicion to conduct an investigatory stop of his vehicle and, therefore, the circuit court should have suppressed evidence obtained as a result of that stop. I affirm.

BACKGROUND

¶2 Preinfalk was charged with OWI and operating a vehicle with a prohibited alcohol concentration, both as second offenses. Preinfalk moved to suppress on the ground that the officer lacked reasonable suspicion to conduct an investigatory stop.

¶3 The following undisputed facts are taken from the suppression hearing. At approximately 12:30 a.m. on January 10, 2012, Watertown City Police Officer Tim Wacker heard a call from dispatch advising officers of a fight in progress at Sidelines Bar, which is located on the corner of North 4th Street and Coal Street in Watertown. Officer Wacker testified that he was in the vicinity and headed to Sidelines to offer assistance. He testified that as he approached Sidelines, he received updates from dispatch “that there are two groups of people that are now leaving,” and then next that “they are getting into cars.” Officer Wacker testified that as he turned the corner from 4th Street onto Coal Street, he observed a green Chevy Blazer “leaving from directly in front of Sidelines” on Coal Street.

¶4 Admitted at the suppression hearing was a log prepared by the dispatcher of the information the dispatcher provided to officers, and the time that information was provided to officers. The log entries provided as follows:

12:33:12 a.m. “caller is around the corner 5/ cole”

12:33:33 a.m. “they’re now leaving cole”

12:33:43 a.m. “jumping in vehs taking off”

12:34:09 a.m. “now leaving in blazer”

Officer Wacker testified that after hearing the radio dispatches and observing the Blazer in the area of the fight, he conducted an investigatory stop. Preinfalk was identified by Officer Wacker as the driver of the vehicle.

¶5 At the hearing, Officer Wacker was questioned as to the identity of the “caller” identified by dispatch. Officer Wacker testified that the “caller” was the person who contacted police in the first place and he testified that the “caller is around the corner 5/cole” “means that the caller is probably around the building from the normal exit of Sidelines and that they are still on scene and able to give statements if they were there—the caller is staying on scene and willing to stick around and give updates of what [is] going on.” Officer Wacker further testified that subsequent entries by dispatch indicate that the caller was giving dispatch updates, which dispatch paraphrased and entered into the log.

¶6 The circuit court denied Preinfalk’s motion to suppress, determining that in light of the information available to him, including the anonymous tip provided to dispatch and his observations, Officer Wacker had reasonable suspicion to stop Preinfalk’s vehicle. Following the denial of his motion to suppress, Preinfalk pleaded guilty to OWI, second offense. Preinfalk appeals.

DISCUSSION

¶7 Preinfalk contends that the circuit court erred in denying his motion to suppress because the anonymous tip provided to police was not sufficiently reliable to justify the stop in this situation and, therefore, the officer did not have reasonable suspicion to stop his vehicle.

¶8 An appellate court’s review of an order denying a defendant’s motion to suppress presents a mixed question of fact and law. *State v. Knapp*, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899. The parties do not dispute the facts. Rather, the issue is the circuit court’s legal conclusion that, given the undisputed facts, the stop was lawful. The application of the historical facts to constitutional principles presents a question of law, which we review de novo. *State v. Johnson*, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182.

¶9 A law enforcement officer may lawfully stop an individual if he or she has reasonable suspicion to believe that the person has committed, is committing, or is about to commit a crime. *Terry v. Ohio*, 392 U.S.1, 22 (1968); *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. The United States Supreme Court in *Terry* defined reasonable suspicion as specific and articulable facts, which taken together with rational inferences from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal behavior is afoot. *Terry*, 392 U.S. at 21-22, 27, 30. See also *State v. Matthews*, 2011 WI App 92, ¶11, 334 Wis. 2d 455, 799 N.W.2d 911.

¶10 It is well established that reasonable suspicion may be based on an informant’s tip, provided the tip exhibits “reasonable indicia of reliability” in light of the totality of the circumstances. *State v. Rutzinski*, 2001 WI 22, ¶¶17-18, 241 Wis. 2d 729, 623 N.W.2d 516. The reliability of a tip is measured by viewing the totality of the circumstances with regard to: “(1) the informant’s veracity; and (2) the informant’s basis of knowledge.” *Id.*, ¶18. The deficiency in one consideration may be compensated for in determining overall reliability of the tip by a strong showing as to the other or by some other indicia of reliability. *Id.* Thus, where less is known about an informant, the tip may nonetheless be

sufficiently reliable if more is known about the informant's basis of knowledge, and vice versa. *See id.*, ¶25. For example, in the case of an anonymous tip, the corroboration of details provided by the informant bolsters the tip's reliability. *See, e.g., Alabama v. White*, 496 U.S. 325, 327-332 (1990) (corroboration by police of tips provided by anonymous tipster bolstered the tip's reliability "well enough to justify the stop"); *State v. Williams*, 2001 WI 21, ¶39, 241 Wis. 2d 631, 623 N.W.2d 106 (corroboration of "innocent, although significant, details of the tip" bolstered reliability of anonymous tip).

¶11 It is not disputed that the tip in this case was anonymous. And I will assume, without deciding, the record does not contain any indicia of the informant's veracity. However, regardless of this assumption, I conclude that the statements provided by the anonymous informant were nevertheless reliable in light of the evidence corroborating them. The caller stated that he or she was near the vicinity of Coal Street and that the perpetrators were getting into a Blazer and leaving Cole Street. Almost contemporaneously, Officer Wacker observed a green Chevy Blazer "leaving from directly in front of Sidelines" on Coal Street. The details of the statements provided by the anonymous caller were corroborated by Officer Wacker, bolstering the tip's reliability "well enough to justify the stop." *See White*, 496 U.S. at 327-332.² Accordingly, I affirm the circuit court's denial of Preinfalk's motion to suppress, and the judgment of conviction.

² Preinfalk notes that the tip in this case did not include a description of the participants who were involved in the altercation at Sidelines and that the tip "contained only readily observable information that any passerby could have provided." However, Preinfalk does not explain why this renders the tip unreliable and does not cite to any legal authority suggesting that it is as a result. We do not consider arguments that are undeveloped or unsupported by legal authority. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App.1992).

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

